Supreme Court, U.S.
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No. 97-1857

In The

Supreme Court of the United States

October Term, 1997

BONNIE VELASCO, *et al.*,

Petitioners,

vs.

WILLIAM F. FAIRALL,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

D'ANA E. JOHNSON
Counsel of Record
DANIEL KARP
DENISE RAMSBURG STANLEY
ALLEN, JOHNSON, ALEXANDER & KARP
Attorneys for Respondent
Suite 1540
100 East Pratt Street
Baltimore, Maryland 21202
(410) 727-5000

146954

(800) 274-3321 • (800) 359-6859
A DIVISION OF COUNSEL PRESS

Lutz Appellate Services, inc.

QUESTION PRESENTED

Whether this Court should review entry of summary judgment that a police sergeant engaged in executing a search warrant is qualifiedly immune from suit under 42 U.S.C. § 1983 for executing the warrant on the wrong townhouse, where the sergeant received a description of the house to be searched, identified a house in the correct row of townhouses matching the description given, radioed to verify the house number and received an apparent confirmation of the house number, which was later discovered to be a miscommunication?

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Respondent respectfully requests that the Court deny the petition for writ of *certiorari*. The United States Circuit Court of Appeals for the Fourth Circuit's opinion, as well as the opinion of the United States District Court for the District of Maryland that it affirmed, is unreported. Petitioners' petition to the Court of Appeals for rehearing was denied. Copies of the pertinent opinions and orders are attached as appendices to the petition.

STATEMENT OF THE CASE

Petitioners' statement of the case can only be characterized as a self-serving narrative of their rose-colored, inaccurate view of largely irrelevant facts, interspersed with occasional references to the procedural history of this case. Accordingly, Respondent offers the following Statement of the Case.

A. Procedural History

Petitioners (hereinafter "Plaintiffs") filed a vague complaint in this case, which the district ordered to be amended. After amendment, the complaint asserted violation of Plaintiffs' constitutional rights by virtue of execution of a search warrant on their home, which was not the home identified in the search warrant. The District Court denied Respondent's (hereinafter "Defendant's") motion to dismiss, which was based in part on qualified immunity.

Following discovery, the District Court granted Defendant's motion for summary judgment in an unreported opinion, holding that Defendant was entitled to qualified immunity.[1] Plaintiffs criticize this ruling as reversing the District Court's prior rulings.

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1. The District Court, as well as the Circuit Court of Appeals, also held that Defendant was entitled to summary judgment as to Plaintiffs' claims of supervisory liability and loss of consortium. Those rulings are not included in the petition for writ of *certiorari*.

Their criticism is misplaced. Having given Plaintiffs the benefit of the doubt on a motion to dismiss before discovery, the District Court initially denied qualified immunity. It revised that ruling following discovery and a motion for summary judgment demonstrating that, under the undisputed material facts, the Defendant could have believed that his action was lawful.

Plaintiffs appealed. The United States Court of Appeals for the Fourth Circuit, after *de novo* review, affirmed the District Court, also in an unpublished opinion. Plaintiffs petitioned for rehearing, but rehearing was denied. Plaintiffs now seek review by this Court.

B. Statement of Relevant Facts

There is no dispute that on October 23, 1991, at approximately 10:30 p.m., an emergency response team (hereinafter the "Team"), under the supervision of Defendant, executed a valid search warrant; but executed it at Plaintiffs' home, which was the wrong address. Plaintiffs' home was located in the same row of townhouses as the house that was the subject of the search warrant.

The evidence demonstrates that Defendant was not the officer who obtained the search warrant. His information about the address was obtained from that officer, Det. Thomas, in a briefing immediately preceding the incident. Det. Thomas described the house as the sixth (6th) doorway from the end near the hexagonal window. Defendant, together with the leader of the Team, Cpl. Speake, drove by the row of townhouses and located a house meeting the description they had been given. Cpl. Speake returned to the Team, and Defendant again drove by the townhouse to observe. He then radioed to the Team to confirm the house number of the house identified in the search warrant. Unfortunately, the

Team leader misunderstood the transmission and responded with the address of Plaintiffs' home, which had been identified as meeting the description of the suspect house, instead of with the address contained on the search warrant.

Following this confirmation, which was later determined to have been a miscommunication, the Team broke down the front door of Plaintiffs' home. The Team found Mrs. Velasco and her children in the home, realized the mistake, and immediately withdrew. After the Team withdrew, Defendant approached Mrs. Velasco, identified himself and the Team as police officers, assured that she was unharmed, explained and apologized for the mistake, secured her front door, and offered to pay for damages.

No other evidence is material to a determination of qualified immunity, for which the standard of review is an objectively reasonable one from the standpoint of the Defendant officer. The evidence is not limited to Defendant's "explanation," as suggested by Plaintiffs; nor is it conflicting or illogical.

Moreover, contrary to Plaintiffs' assertion, the Fourth Circuit did *not* rule that the credibility and explanation of Defendant is not subject to challenge. This statement is obviously made in an effort to create the illusion that there is some split among the circuits that might justify this Court's attention.

REASONS FOR DENYING THE WRIT

THERE IS NO SPLIT IN THE CIRCUITS AS TO APPLICATION OF THE STANDARD FOR GRANTING QUALIFIED IMMUNITY ON SUMMARY JUDGMENT WHEN A POLICE OFFICER HAS EXECUTED A SEARCH WARRANT ON THE WRONG RESIDENCE.

In an effort to entice this Court to issue a writ of *certiorari*, Plaintiffs have attempted to create the impression that there is a split of authority among the circuits as to the appropriate standard for granting qualified immunity to a police officer when a search warrant has been executed on the wrong residence. No such split of authority exists, and the cases cited by Plaintiffs do not support their argument.

All of the cases cited by Plaintiffs applied the same standard as the District Court and the Fourth Circuit applied in this case: the appropriate standard as set forth in *Harlow v. Fitzgerald*, 457 U.S. 300, 813 (1982), and its progeny. *Harsfield v. Lemacks*, 50 F.3d 950 (11th Cir. 1995); *Dawkins v. Graham*, 50 F.3d 532 (8th Cir. 1995); *Pray v. City of Sandusky*, 49 F.3d 1154 (6th Cir. 1995); *Castro v. United States*, 34 F.3d 106 (2nd Cir. 1994); *Richardson v. Oldham*, 12 F.3d 1373 (5th Cir. 1994); *Hill v. McIntyre*, 884 F.2d 271 (6th Cir. 1989).[2]

The "split of authority" argued by Plaintiffs does not relate to the standard applied, but rather to the outcome of application of that standard in specific cases. Obviously, all factual situations will not yield the same result. Sometimes, courts have found that under the particular facts of a case, the officer's mistake was reasonable. Other times, they have found that it was not.

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2. The particular facts of these cases, and their distinguishing characteristics from the instant case, are set forth in District Judge Chasanow's well-considered opinion. Petition Appendix B.

In this case, Plaintiffs argue that the Fourth Circuit erred by ignoring the "physical differences between the houses, the location of the stairs, the color schemes, and the posted addresses." Those differences in characteristics of the houses argued by Plaintiffs were not apparent to Defendant because he had not previously seen the correct house. Plaintiffs' house met the description he was given, and the address was confirmed, albeit erroneously. The facts in this case simply are not the same as the facts of every other case involving execution of a search warrant on the wrong house.

What Plaintiffs essentially argue is that Defendant is not entitled to qualified immunity unless he does *everything* that every reported case on the issue of execution of a search warrant on the wrong address suggests could have been done. That is not the standard required under *Harlow*. A police officer is not charged with intimate knowledge of the particular facts of every case ever considered on an issue related to his actions, only with knowledge of "clearly established constitutional rights." *Harlow*, 457 U.S. at 813.

Plaintiffs belatedly attempt to generate a standard of care that police officers must meet in executing search warrants. That is not the appropriate role of the courts. During discovery in this case, Plaintiffs identified no experts on police practices or the standard of care required in executing search warrants. They did not even attempt to discover from Defendant what the usual procedures were or whether any procedures or guidelines existed or were not met. There was no evidence that Defendant was required to do more than he did. Plaintiffs are not entitled to have this Court substitute case law for evidence of the appropriate standard of care.

The trial and appellate courts both found that under the particular facts of this case a reasonable police officer in Defendant's position could have believed that his actions in matching the house to the description and radioing to confirm the address were objectively

reasonable. It matters not that Defendant's conclusion as to the identity of the house turned out to be wrong; nor does it matter that Plaintiffs believe that Defendant should have done something more. Defendant is entitled to qualified immunity.

The District Court and the Circuit Court of Appeals correctly applied the standard for finding qualified immunity. Their opinions are unpublished, and there is no reason whatsoever why this Court should waste its time rehearing a matter that was fully and correctly decided by those courts in opinions which, in any event, have no precedential value.

CONCLUSION

The writ of *certiorari* is sought for no other purpose than to waste this Court's time reviewing *de novo* a factual record, which has already been reviewed by two competent courts, in Plaintiffs' personal, self-serving effort to obtain reversal of unpublished opinions that are neither controversial nor of public import and that will have no precedential value. The petition for writ of *certiorari* should be denied.

Respectfully submitted,

D'ANA E. JOHNSON
Counsel of Record
DANIEL KARP
DENISE RAMSBURG STANLEY
ALLEN, JOHNSON, ALEXANDER & KARP
Attorneys for Respondent
100 East Pratt Street
Suite 1540
Baltimore, Maryland 21202
(410) 727-5000